IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

(1) D.B.CRIMINAL APPEAL NO.592/2006
(Tulsi Ram Vs. State of Rajasthan)

(2) D.B.CRIMINAL APPEAL NO.631/2006
(Panna Lal Vs. State of Rajasthan)

D.B. Criminal Appeals under Section 374(2) Cr.P.C. against the judgment dt.27.5.2006 passed by the Additional Sessions Judge(Fast Track), Pratapgarh in Sessions Case No.08/2006.

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Date of Judgment: August 04, 2006

P R E S E N T

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE R.P.VYAS

Mr.Ramesh Purohit, for appellant Tulsi Ram
Mr.Rakesh Arora, for appellant Panna Lal

Mr.O.P.Rathi, Public Prosecutor

BY THE COURT: **(PER HON'BLE MR.MATHUR J.)**

1. These appeals are directed against the judgment dated 27th May, 2006 passed by the Additional Sessions

Judge (Fast Track), Pratapgarh convicting the appellants Tulsi Ram and Panna Lal of offence under Section 302/34 I.P.C. sentencing each of them to imprisonment for life and to pay a fine of Rs.500/-; in default of payment to further undergo 6 months' rigorous imprisonment. The appellants have also been convicted of offence under Section 201/34 I.P.C. and sentenced to 3 years' rigorous imprisonment and to pay a fine of Rs.500/-; in default of payment to further undergo 6 months' rigorous imprisonment.

2. Briefly stated the prosecution case is that on 2nd January, 2006 P.W.6 Chunni Lal submitted a typed First Information Report Ex.P12 at Police Station, Arnod, District, Chittorgarh stating inter alia that on 21.12.2005 at about 5.30 P.M. his father met him at place known as Kanad. Giving a Kerosene Container he asked him to go home. He also stated that he would be following him soon, but he did not return. On 25.12.2005 a dead body was found in the field known as Jamburel. He rushed to the spot along with Manshanker and P.W.8 Jagdish. He identified the dead body that of his father Prabhu Lal. The autopsy on the dead body was conducted in presence of the police. On

this information police registered a case for offence under Section 302, 201 I.P.C. and proceeded with investigation. After usual investigation police laid charge-sheet against the appellants for the said offences. During the trial the prosecution sought to prove the charges levelled against the appellants setting out the following piece of circumstances:-

(1) The deceased was last seen in the company of the appellants;

(2) Extra judicial confession of the appellants before P.W.2 Dr.Ratan Kumar Meena and P.W.9 Yetendra Kumar Jain;

(3) The recovery of the bicycle of the deceased in pursuance of the information given by the appellant Panna Lal;

(4) The recovery of the motorcycle from the possession of appellant Tulsi Ram.

3. It is not in dispute that deceased Prabhu Lal died of homicidal death. The autopsy on the dead body was conducted by a medical board vide Ex.P3. The post-mortem report has been proved by P.W.2 Dr.Ratan Kumar Meena. The medical board noticed the following injuries on the dead body of Prabhu Lal:

(1) Skin pill of ebullient present. Putrefaction of body started. Maggots not present. Clenched both hand. Seminal fluid discharge present. Bleeding from nostril & ears present & clotted puffy face & cynosed BIL pupils dilated & fixed.

(2) Fracture of hyhoid bone present.

In the opinion of the medical board the cause of death of deceased Prabhu Ram was asphyxia due to throttling leading respiratory cardice failure.

4. We have heard the learned counsel for the appellants as well as the learned Public Prosecutor. We have also perused the record. It is submitted by the learned counsel that there is no legal evidence worth the name to connect the appellants with the alleged crime. The learned counsel has criticised the each piece of circumstance and submitted that none of them are of any credence. On the other hand the learned Public Prosecutor has supported the judgment of the trial court.

5. In the first instance the prosecution has relied upon the circumstance of last seen. In order to prove the said circumstance the prosecution has examined P.W.8 Jagdish. Deceased Prabhu Lal was the real

maternal uncle of this witness. He used to work on the shop of deceased Prabhu Lal. He stated that on 21st December his maternal uncle deceased Prabhu Lal arrived at his shop at about 5.30 along with a container of Kerosene. At that time the son of the deceased P.W.6 Chunni Lal was also on the shop. He sent him home giving the container of Kerosene. He told him that he would be following him soon. Thereafter deceased Prabhu Lal riding on a bicycle proceeded towards Jambhurel but never returned. On 25th he came to know that a dead body was lying in Jamburel field. He along with P.W.6 Chunni Lal went to the spot and identified the dead body that of his deceased maternal uncle Prabhu Lal. He further stated that at a distance of about 13 ft. from his shop there is house of appellant Tulsi Ram. After Prabhu Lal left the shop on bicycle both the appellants also proceeded towards Jamburel riding on the motorcycle.

6. Having read the statement of this witness, we are of the view that this piece of circumstance can hardly be said to be circumstance of last seen. The deceased and the appellants proceeded Jamburel separately. On the basis of this evidence it cannot be said that the

deceased was in the company of the appellants. It has been admitted in the cross examination by this witness that before deceased Prabhu Lal left the place there was no talk of any sort between them. The appellants proceeded on motorcycle independently towards Jamburel. In any case this circumstance cannot be said to be of conclusive nature. The learned trial court has committed error in taking into consideration the circumstance of last seen on the basis of the statement of P.W.8 Jagdish as an important incriminating circumstance against the appellants to hold them guilty of the murder of Prabhu Lal.

7. In order to prove second circumstance i.e. extra judicial confession the prosecution has produced P.W.2 Dr.Ratan Kumar Meena and P.W.9 Yetendra Kumar Jain. P.W.2 Dr.Ratan Kumar Meena stated that he was called at the Police Station, Arnod for conducting the postmortem of the deceased Prabhu Lal. He along with the Lab Technician Yetendra Kumar Jain went to the Police Station, Arnod. In their presence the appellant Panna Lal gave a statement to the police that on 21st he along with Tulsi Ram riding on the motorcycle reached on the field of Tulsi Ram. After some time

deceased Prabhu Lal also arrived. He was called by Tulsi Ram. He asked him to settle their dispute. After some time when deceased Prabhu Lal was to leave, Tulsi Ram caught hold of him and killed him by strangulation. He died instantaneously. In our view this statement is inadmissible in evidence for the simple reason that it is hit by Section 25 of the Evidence Act, which provides that no confession made to a police officer shall be proved against a person accused of any offence. Secondly the statement of appellant Panna Lal is exculpating. He has not made any confession for him. He has attributed to Tulsi Ram. The exculpating statement is not admissible in evidence as a confession. It would be convenient to extract the relevant part of the statement which shows the presence of the police,

> "थानाधिकारी ने मुझे थाने में बुलाया था, मेरे साथ ही येतेन्द्र जैन लैब टेक्नीशियन साथ ही गया था। वहां पर थानेदार जी थे व पन्नालाल भी मौजूद था। पन्नालाल ने बयान दिया था"

As we have found the evidence of extra judicial confession as inadmissible, it is not necessary to refer to statement of P.W.9 Yetendra Kumar Jain, which is also on same line. Thus, the learned trial court has committed gross illegality in relying on the second piece of circumstance.

8. As regards the third circumstance, in pursuance of the information given by appellant Panna Lal a bicycle of the deceased was recovered from the heap of fodder vide Ex.P16. It has been admitted by the prosecution witnesses that the cycle was found from an open place. In view of this, this circumstances is also of no avail.

9. The last circumstance relied upon by the prosecution is the recovery of the motorcycle from the possession of Tulsi Ram. There is nothing on record to show as to the ownership of the said motorcycle. The police has not bothered to find in whose name the vehicle was registered. The recovery of the motorcycle cannot be said to be incriminating article. Thus, the trial court has committed error in relying upon such sort of flimsy circumstances.

10. At this stage, it may also be pointed out that the defence has examined D.W.1 Nakulal, D.W.2 Ramesh, D.W.3 Raju and D.W.4 Smt.Premlata. The defence of Panna Lal is that at the time of incident he was in the hospital attending his wife. Apart from defence witnesses, this fact is also admitted by P.W.2 Dr.Ratan

Kumar Meena. Be that as it may, we have not found any of the circumstances worth credence connecting the appellants with the alleged crime. The learned trial court was in error in convicting the appellants on such flimsy and inadmissible evidence.

11. Consequently, both the appeals are allowed. The judgment of the trial court – Additional Sessions Judge (Fast Track), Pratapgarh dated 27.5.2006 is set aside. The appellants Tulsi Ram S/o Gulab and Panna Lal S/o Heera Lal are acquitted of the charges under Sections 302/34 & 201/34 I.P.C. They are in Jail. They shall be released forthwith, if not required in any other case.

(R.P. VYAS), J. **(N.N.MATHUR), J.**

BKS/-